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6 Attorneys for Plaintiff
7 UNITED STATES OF AMERICA

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) CASE NO. 07CR3190-JAH
12)
13 Plaintiff,) DATE: January 14, 2008
TIME: 8:30 p.m.
14)
15 v.) STATEMENT OF FACTS AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF
16 JOSE REYMUNDO) GOVERNMENT'S MOTIONS FOR RECIPROCAL
CONTRERAS-HERNANDEZ,) DISCOVERY AND TO COMPEL FINGERPRINT
17) EXEMPLARS
18 Defendant.)
19)

20
21 COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and
22 through its counsel, KAREN P. HEWITT, United States Attorney, and
23 Peter J. Mazza, Assistant United States Attorney, hereby files the
24 attached statement of facts and memorandum of points and authorities
25 in support of Government's motion for reciprocal discovery and
26 fingerprint exemplars.

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I

STATEMENT OF THE CASE

On November 23, 2007, a federal grand jury in the Southern District of California returned a one-count Indictment charging Jose Reymundo Contreras-Hernandez ("Defendant") with Deported Alien Found in the United States, in violation of Title 8, United States Code, Section 1326. The Indictment further alleged that Defendant had been removed from the United States subsequent to October 28, 2005.

II

STATEMENT OF FACTS

A. THE INSTANT OFFENSE

On October 27, 2007, United States Supervisory Border Patrol Agent Mark E. Nolan was conducting assigned patrol duties in the Campo Border Patrol Stations area of operations. At approximately 3:00 a.m., Agent Nolan responded to a seismic intrusion device located on a trail known to be used by illegal aliens to further their illegal entries into the United States. The seismic intrusion device is located approximately nine miles east of the Tecate, California Port of Entry and approximately 13 miles north of the United States/Mexico international boundary.

Upon arriving at the location of the seismic intrusion device, Agent Nolan observed fresh footprints headed in a north-bound direction. Agent Nolan followed the footprints north until he came upon a group of ten individuals attempting to conceal themselves. Agent Nolan identified himself as an United States Border Patrol agent. He then questioned each individual regarding their immigration status. All ten individuals, including Defendant, stated that they were citizens and nationals of Mexico without any documents

1 to allow them to enter or remain in the United States legally.
2 Defendant and the other nine individuals were taken into custody and
3 transported to the Campo, California Border Patrol Station.

4 At the station, Defendant's personal information was entered
5 into immigration and criminal history databases. Defendant's
6 identity was confirmed, along with his criminal and immigration
7 histories.

8 At approximately 3:00 p.m., Agents informed Defendant of his
9 Miranda rights. Defendant invoked those rights. No questions were
10 asked of Defendant.

11 **B. DEFENDANT'S IMMIGRATION HISTORY**

12 Defendant is a citizen of Mexico who was physically removed from
13 the United States through the San Ysidro, California Port of Entry
14 to Mexico on September 27, 2007.

15 **C. DEFENDANT'S CRIMINAL HISTORY**

16 Defendant was convicted of Solicitation to Commit Murder, in
17 violation of California Penal Code Section 653F(B) by a California
18 Superior Court in Santa Cruz, California on October 28, 2005.

19 **III**

20 **GOVERNMENT'S MOTIONS**

21 **A. MOTION FOR RECIPROCAL DISCOVERY**

22 **1. RULE 16(b)**

23 The United States, pursuant to Rule 16 of the Federal Rules of
24 Criminal Procedure, requests that Defendant permit the United States
25 to inspect, copy, and photograph any and all books, papers,
26 documents, photographs, tangible objects, or make copies of portions
27 thereof, which are within the possession, custody or control of
28

1 Defendant and which Defendant intends to introduce as evidence in his
2 case-in-chief at trial.

3 The United States further requests that it be permitted to
4 inspect and copy or photograph any results or reports of physical or
5 mental examinations and of scientific tests or experiments made in
6 connection with this case, which are in the possession or control of
7 Defendant, which Defendant intends to introduce as evidence-in-chief
8 at the trial, or which were prepared by a witness whom Defendant
9 intends to call as a witness. Because the United States has complied
10 with its obligations for delivery of reports of examinations, the
11 United States is entitled to the items listed above under Rule
12 16(b)(1) of the Federal Rules of Criminal Procedure. The United
13 States also requests that the Court make such order as it deems
14 necessary under Rules 16(d)(1) and (2) to ensure that the United
15 States receives the discovery to which it is entitled.

16 **2. RULE 26.2**

17 Rule 26.2 of the Federal Rules of Criminal Procedure requires
18 the production of prior statements of all witnesses, except a
19 statement made by Defendant. This rule thus provides for the
20 reciprocal production of Jencks statements.

21 The time frame established by the rule requires the statement
22 to be provided after the witness has testified. To expedite trial
23 proceedings, the United States hereby requests that Defendant be
24 ordered to supply all prior statements of defense witnesses by a
25 reasonable date before trial to be set by the Court. Such an order
26 should include any form in which these statements are memorialized,
27 including but not limited to, tape recordings, handwritten or typed
28 notes and/or reports.

1 **B. Motion to Compel Fingerprint Exemplars**

2 The Government requests that Defendant be ordered to make
3 himself available for fingerprint exemplars at a time and place
4 convenient to the Government's fingerprint expert. See United States
5 v. Kloepper, 725 F. Supp. 638, 640 (D. Mass. 1989) (the District
6 Court has "inherent authority" to order a defendant to provide
7 handwriting exemplars, fingerprints, and palmprints). Since the
8 fingerprint exemplars are sought for the sole purpose of proving
9 Defendant's identity, rather for than investigatory purposes, the
10 Fourth Amendment is not implicated. The Ninth Circuit in United
11 States v. Ortiz-Hernandez, 427 F.3d 567, 576-79 (9th Cir. 2005),
12 upheld the Government's ability to compel a defendant to submit to
13 fingerprinting for purposes of identification at trial. See United
14 States v. Garcia-Beltran, 389 F.3d 864, 866-68 (9th Cir. 2004)
15 (citing United States v. Parga-Rosas, 238 F.3d 1209, 1215 (9th Cir.
16 2001)). Furthermore, an order requiring Defendant to provide
17 fingerprint exemplars does not infringe on Defendant's Fifth
18 Amendment rights. See Schmerber v. California, 384 U.S. 757, 770-71
19 (1966) (the Fifth Amendment privilege "offers no protection against
20 compulsion to submit to fingerprinting"); Williams v. Schario, 93
21 F.3d 527, 529 (8th Cir. 1996) (the taking of fingerprints in the
22 absence of Miranda warnings did not constitute testimonial
23 incrimination as proscribed by the Fifth Amendment).

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IV

CONCLUSION

For the foregoing reasons, the United States requests that the Government's Motions be granted.

DATED: December 28, 2007.

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

/s/ Peter J. Mazza
PETER J. MAZZA
Assistant U.S. Attorney
Peter.Mazza@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 07CR3140-JAH
)
Plaintiff,)
)
v.)
) CERTIFICATE OF SERVICE
JOSE REYMUNDO)
CONTRERAS-HERNANDEZ)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, PETER J. MAZZA, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of GOVERNMENT'S NOTICE OF MOTIONS AND MOTIONS FOR RECIPROCAL DISCOVERY AND TO COMPEL FINGERPRINT EXEMPLARS on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Candis Mitchell, Esq., Federal Defenders of San Diego, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2007.

/s/ Peter J. Mazza
PETER J. MAZZA